

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

SUSANNA MIRKIN,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

Case No. 18 Civ. 2949 (ARR) (RER)

v.

XOOM ENERGY, LLC and
XOOM ENERGY NEW YORK, LLC

Defendants.

CLASS ACTION NOTICE ORDER

WHEREAS, on August 31, 2023, the Court issued an Order in this action certifying a Class, appointing Wittels McInturff Palikovic as Class Counsel, and appointing Plaintiff Susanna Mirkin as the Class representative, ECF No. 152;

WHEREAS, Class Counsel has applied to the Court for an order approving the form and plan for distributing notice to the Class pursuant to Fed. R. Civ. P. 23(c), ECF No. 156;

NOW, THEREFORE, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. That the following terms shall constitute the procedure by which members of the Class certified by the Court (“Class Members”) will be given notice (the “Notice”) pursuant to Fed. R. Civ. P. 23(c).

2. The Court appoints Arden Claims Service, LLC as the notice administrator in this matter (the “Notice Administrator”).

3. The Court approves, as to form and content, the Short-Form and Long-Form Notice submitted as ECF Nos. 156–3 and 156–4. The Notice Administrator may modify the form and/or

content of the Notice as it deems necessary and appropriate to maximize its impact and reach, as long as those modifications substantially comport with the Notices.

4. Within 15 business days of this Order: Defendants shall provide Class Counsel with a Class list containing each Class Member's XOOM enrollment number, full name(s) associated with the account, email addresses, service address, billing address, all phone numbers associated with the account, and language preference(s) if known (together, this information is referred to herein as the "Class List"). The Class List is to be furnished in an electronic format that can be sorted, such as an excel file. At the time of providing the Class List, Defendants shall file on the docket a certification that the Class List represents the most current and up-to-date information that Defendants have for Class Members.

5. Within 5 business days of receiving the Class List, the Notice Administrator shall cause a copy of the Notice to be translated into Spanish. The Notice Administrator shall provide for the cost of such translation.

6. Within 10 business days of receiving the Class List: the Notice Administrator shall develop a dedicated website that contains information about this case, copies of key documents, (including the Long-Form Notice, the Court's certification Order, and the Complaint), answers to frequently asked questions, and toll-free number and email address where Class Members can request additional information. The website shall be consistent with the Long-Form Notice. Five business days prior to activating the website, the Notice Administrator shall provide a version of the website for the parties' review and comment. Any disputes regarding the website shall be promptly brought to the Court's attention. The website will not be activated, if at all, until after the Court's decision on defendants' motion for a stay pursuant to Fed. R. Civ. P. 23(f).

7. Also within 10 business days of receiving the Class List, the Notice Administrator shall prepare an interactive voice response hotline established and staffed by the Notice

Administrator to provide additional assistance by offering basic information and allowing Class Members to request a callback from a live person. The hotline will not be activated, if at all, until after the Court's decision on defendants' motion for a stay pursuant to Fed. R. Civ. P. 23(f).

8. Both the website and hotline shall also be available in Spanish. The Notice Administrator shall provide for the cost of such translations.

9. Within 5 business days of the Court's decision on defendants' motion for a stay pursuant to Fed. R. Civ. P. 23(f), the Notice Administrator shall cause an English version of the Short-Form Notice, or the appropriate non-English version, to be sent via email to all Class Members using each Class Member's email address as recorded in Defendants' records or an updated email address as determined by the Notice Administrator pursuant to this Order. The Short-Form Notice shall be mailed by first class mail to each Class Member for whom the Class List does not contain a valid or working email address.

10. If any mailed Short-Form Notices are returned to the Notice Administrator as undeliverable, the Notice Administrator shall complete a standard skip trace to ascertain the current mailing address of the Class Member and, if such address is ascertained, the Notice Administrator may re-send the Notice to the new address.

11. If a Short-Form Notice is returned to the Notice Administrator with a forwarding address for the recipient, the Notice Administrator shall re-mail the Short-Form Notice to that address, and the forwarding address will be deemed the address for that Class Member.

12. If any emailed Short-Form Notices are determined by the Notice Administrator to be undeliverable, the Notice Administrator shall undertake reasonable efforts to identify working email addresses for Class Members and re-email the Short-Form Notices. For any further undeliverable Short-Form Notices, the Notice Administrator shall follow the procedures outlined herein to mail the Short-Form Notices.

13. The opt-out period will expire 60 days after notice is issued. For any Class Members that are re-issued notice because the Notice Administrator determines in its discretion that the prior notice was not deliverable, the opt-out deadline will be extended to reflect the later notice date such that all Class Members will be afforded a 60-day opt-out period.

14. Five business days after the opt-out period expires (regardless of whether certain opt-out periods are extended in accordance with the preceding paragraph), the Notice Administrator shall file a declaration confirming that it has distributed Notice in accordance with this Order.

15. Class Members may request to be excluded from the Class. Exclusion requests must be emailed or postmarked to the Notice Administrator by the opt-out deadline. Class Counsel shall electronically file, under seal, a list of excluded Class Members within 20 business days after the opt-out period expires (regardless of whether certain opt-out periods are extended in accordance with paragraph 14 above). To the extent additional Class Members submit valid exclusion requests after this deadline, Class Counsel shall, within a reasonable time, supplement the list of excluded Class Members.

16. The distribution plan of notice described herein constitutes the best notice practicable under the circumstances, including individual notice to all members of the Class who can be identified through reasonable effort, and constitutes valid, due, and sufficient process, complying fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

IT IS SO ORDERED.

Dated: October 17, 2023

Hon. Ramon E. Reyes, Jr. Digitally signed by Hon. Ramon E. Reyes, Jr.
Date: 2023.10.17 13:22:13 -04'00'

HON. RAMON E. REYES, JR.
UNITED STATES MAGISTRATE JUDGE